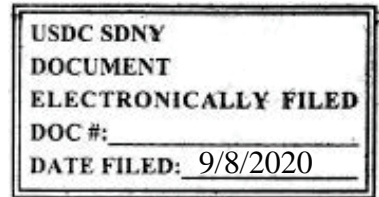


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



Gary Thomas,

Movant,

–v–

United States of America,

Respondent.

19-CV-9756 (AJN)

13-CR-0360-2 (AJN)

ORDER

ALISON J. NATHAN, District Judge:

The Court received the attached letter by mail from Egbert Thomas, Defendant Gary Thomas' brother. The letter states that Egbert Thomas was unable to view several files on the flash drive sent from Defendant's prior trial counsel, Dale Smith, because they were password protected or otherwise inaccessible.

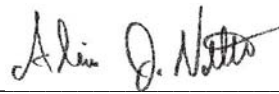
In its letter of July 27, 2020, the Government identified transmission of the data contained on the flash drive to Egbert Thomas as one of two additional steps taken to ensure that Defendant would have a fair opportunity to timely supplement his papers in support of his § 2255 motion. The Court relied on that representation in declining to extend the deadline for Defendant to supplement his reply brief or order additional discovery.

The Government is directed to file a letter with the Court by September 11, 2020, responding to Egbert Thomas' letter. The letter should include a proposal for ensuring Mr. Thomas has access to the materials he requested and a statement of the Government's position on whether a further extension to the briefing schedule in this case would be appropriate.

The Clerk of Court is respectfully directed to mail a copy of this Order to Defendant Gary Thomas and to note the mailing on the public docket.

SO ORDERED.

Dated: September 4, 2020
New York, New York

A handwritten signature in black ink, appearing to read "Alison J. Nathan", written over a horizontal line.

ALISON J. NATHAN
United States District Judge

August 23, 2020

The Honorable Alison J. Nathan
United States District Judge
Southern District of New York
40 Foley Square
New York, NY 10007

RE: *Gary Thomas v. United States of America*, Cause No. 19-CV-9756 (AJN)

Dear Honorable Judge Nathan:

My name is Egbert Thomas. I am the brother of Gary Thomas, #08951-094. I have been authorized by my brother through an approved notarized Power of Attorney to act on his behalf in regards to his post-conviction motion presently pending before the court. The purpose of this communication is to inform you that I have not been able to access nor locate several files that were entered into evidence on the Flash-Drive that was provided to me by Attorney Dale Smith on August 7, 2020. The flash-drive contains Gary's trial discovery material. Upon my receipt of the flash drive, I used a laptop to access the files. Several notices popped up requesting a password. One or two files stated "this is the password;" however, when entered a message appeared stating "Incorrect Password." Therefore, I have not been able to gain access to these files. I am able to view the flash-drive, but am unable to access or open many of the files that are very important and needed to adequately prepare for Gary Thomas's 2255.

In speaking with Gary in regard to the situation, I explained to him that I was having the same issues he recently experienced with the flash-drive gaining access to the materials that Attorney Smith provided to him through prison employees. He seemed quite frustrated, and conveyed to me, his belief that the government seem to have forwarded files that are intangible, as well as materials that are provided in such a manner that only they can access. Gary states even during his trial, Attorney Smith, and his codefendants' attorneys were complaining about their inability to access the discovery material files in the format the government had provided. I cannot help but wonder, if experienced trial attorneys and an attorney who works for the government at Gary's prison and other prison's employees could not access the flash-drive material; that then the fault must be attributed to the individual or individuals who first created the particular files. I will furnish you several error messages that I received on a few files for which I have made several attempts accessing on the flash-drive along with several programs that are not accessible for review.


I know this Honorable Court provided a deadline of August 31, 2020, for Gary to file his additional supplementing pleading. I do not believe a thorough examination needed to complete the supplement pleading is not possible due to the inability to access files on the Flash-Drive that Attorney Smith sent to me. It is my understanding, as Gary informed me that Attorney Smith had informed the government's attorney that he would provide to me on Gary's behalf a Flash-Drive

with material that can be readily accessed and converted into paper documents for me to send to Gary. This cannot be done for the reasons I have stated. I have communicated this to Gary and he asked me to write a letter and inform you of the issue. We ask that you consider directing the government's attorney to appear before you and demonstrate the accessibility of the flash-drive files on one of the court's devices; and have the same showing given to the Clerk of the Court to forward to my attention so that I may generate the paper files Gary has requested. Gary informed me that he recently filed a clarifying motion that limits his request to specific material. One item he mentioned is the discovery surrounding the government's use of a device that tracks cellular phones that was used to keep up with the location of the informant's phone when he was on the island of St. Croix.

In closing, I humbly ask that you grant Gary additional time so that he can have a meaningful opportunity to obtain the discovery material. He assures me he is not trying to fish for anything that bites, but only to show that he was not involved in drug trafficking; and with your monitoring of this post-trial discovery dispute, you can assure that Attorney Smith whom Gary's proceeding complaint targets and the government as well, are acting in good faith with respect to getting to the truth. The showing of good faith should have begun with providing Gary with readily available access to the discovery files compiled in his criminal case.

I thank you in advance for your time, consideration and assistance in trying to resolve this matter. If you have any questions or concerns regarding this matter, please feel free to contact me at egthomas68@gmail.com.

Sincerely,


Egbert V. Thomas, III

**DURABLE POWER OF ATTORNEY
FOR
GARY V.J. THOMAS**

KNOW ALL MEN BY THESE PRESENTS, that I, **GARY V.J. THOMAS**, a resident of, and domiciled in the **TERRITORY OF THE UNITED STATES VIRGIN ISLANDS** and temporarily in the **STATE OF NEW YORK**, hereby constitute and appoint as my true and lawful attorneys-in-fact:

Maline Thomas
P.O. Box 302
Christiansted, VI 00821

and

Egbert Thomas, ^{2-VT}~~III~~
P.O. Box 302
Christiansted, VI 00821

By this document I intend to create a Durable Power of Attorney and designation of guardian effective upon the execution hereof. Accordingly, pursuant to the Virgin Islands Revocable Power of Attorney Act, 15 V.I.C. §§1261, *et. seq.*, and §5-1501B, *et. seq.* of New York's General Obligation Law, the powers granted in this document shall not be affected by my subsequent disability or incapacity or lapse of time and, in the event of any mental or physical incapacity suffered by me, this Revocable Power of Attorney shall not be terminated by operation of law, but shall remain in full force and effect until revoked by me. It is also my intent, and my attorneys-in-fact shall accept this appointment subject to this direction, that the authority of my attorneys-in-fact to act on my behalf shall become effective upon the signature of both attorneys-in-fact.

SECTION I-AUTHORIZATION TO ACT FOR PRINCIPAL

- 1.1.1 To buy, hold, manage, develop, partition, subdivide, lease, eject tenants or other persons from mortgage, encumber, exchange, sell or convey my Property, including particularly any real property.
- 1.1.2 To buy, hold, encumber, exchange, sell or transfer any and all stocks, bonds, debentures, stock rights, warrants, options, investment company or investment trust interests, partnership interests, joint venture interest and any other securities or other types of investment property of every kind and nature; to vote and otherwise act as my proxy with respect to any and all stocks and other securities or investments, including any stocks in Paradise Waste.

initial 

REVOCABLE POWER OF ATTORNEY

Gary V.J. Thomas to Maline Thomas & Egbert Thomas, Jr.

Page 2

- 1.1.3 To take possession and remove or ship any of my Property to or from any destination; and to execute and deliver any receipt, shipping ticket, or other document necessary or convenient for such purpose.
- 1.1.4 To obtain insurance of any kind in connection with any of my Property; and to execute proofs of loss under any insurance policies.
- 1.1.5 To execute and deliver title documents and papers necessary to register any motor vehicle or to register the sale thereof and the transfer of legal title thereto.
- 1.2 **Collection of Debts.** To demand, sue for, compromise, collect and receive all sums of money, bequests, rents, interests, dividends and any other amounts whatsoever as are now due or shall hereafter become due to me; to foreclose mortgages; to execute and deliver receipts, releases or other discharges of indebtedness; to execute vouchers for any and all allowances, compensation and reimbursements payable to me by any federal, state or local governmental agency or department.
- 1.3 **Borrowing and Lending.** To borrow or lend money or other property on such terms as my attorneys-in-fact deems advisable, with or without security; and to execute or receive promissory notes, drafts, mortgages, agreements or other instruments necessary or convenient for such purpose.
- 1.4 **Deposits, Withdrawals, and Payments.** To deposit moneys in, and to withdraw, draw checks or drafts upon, and to otherwise deal with any and all savings accounts, checking accounts, or other accounts of any kind with any bank, savings and loan association, or other financial institution; to have any funds withdrawn from any account paid to my attorneys-in-fact in my attorney's own name; to sign checks or drafts in my name, whether such checks or drafts are to be drawn to the individual order of my attorneys-in-fact or otherwise; to endorse, cash and receive the proceeds of any and all checks, vouchers and other orders for money; to receive statements, notices or other documents concerning any and all such accounts; to pay any and all bills now or hereafter payable by me and all bills for expenses incurred for my use, comfort or benefit or the use, comfort or benefit of members of my family who, from time to time, in the discretion of my attorneys-in-fact, may be dependent upon me for financial assistance.
- 1.5 **Safe Deposit Boxes.** To have access to, and full control over, any and all safe-deposit boxes or other receptacles of safekeeping leased by me at any bank or other place.

initial 

REVOCABLE POWER OF ATTORNEY

Gary V.J. Thomas to Maline Thomas & Egbert Thomas, Jr.

Page 3

- 1.6 **Life Insurance.** To exercise any and all rights, options or privileges available to me under any life insurance policy, including the rights to surrender the policy, make a policy loan, and change the beneficiary.
- 1.7 **Business Interests.** To carry on, engage in, and in every other ways participate fully in any business or businesses (whether corporate or otherwise) which I own or in which I may have an interest.
- 1.8 **Litigation.** To institute, prosecute, defend, compromise, arbitrate, settle or dispose of any legal, equitable or administrative actions, suits or other proceedings to which I am or become a party or in which I have an interest; and to assert or waive any and all rights, privileges and defenses available to me.
- 1.9 **Employment of Others.** To employ, supervise and discharge such investment counsel, attorneys-at-law, accountants, physicians, nurses, home companions, domestic employees or other persons in connection with any of my personal or business affairs, as my attorneys-in-fact deem advisable; and with respect to the employment of investment counsel, to delegate to such counsel full discretionary powers concerning investment recommendations and changes.
- 1.10 **Fiduciary Positions.** To exercise any powers and any duties conferred or imposed upon me, whether solely or jointly with any other or others, whether as executor, personal representative or trustee, or in any other fiduciary capacity, to the extent that any such powers or duties are capable of being validly delegated.
- 1.11 **Gifts.** To make such charitable contributions and such gifts to any member of my family, whether by blood or marriage, of such type and in such amounts as, in the discretion of my attorneys-in-fact, shall be consistent with a pattern of giving established by me or an intention evidenced by me.
- 1.12 **Tax Returns.** To prepare, execute and file on my behalf any and all income, gift and other tax returns or reports, whether on a joint or individual basis; to execute protests, agreements, waivers, consents, powers of attorney, compromises, closing agreements, claims for refund, petitions to the tax court or other courts regarding tax matters, and any other documents relating to any such taxes; to receive confidential information from the Internal Revenue Service or any other taxing authority; and to do any other act on my behalf in connection with any and all tax matters.
- 1.13 **General Powers.** To do any act which either a Virgin Islands trustee or a Virgin Islands guardian may do; and generally to act for me and to do

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Gary V.J. Thomas to Maline Thomas & Egbert Thomas, Jr.

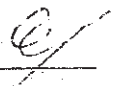
Page 4

whatsoever thing that in the discretion of my attorneys-in-fact may be necessary or advisable in all matters affecting my personal business affairs or my Property until this Power of Attorney is terminated.

SECTION II-SUPPLEMENTAL PROVISIONS AND GUARDIANSHIP

- 2.1 All powers granted herein may be exercised without application to, approval of, or ratification by any court. I ratify and confirm all that my attorneys-in-fact shall do or cause to be done, and all documents executed by my attorneys-in-fact shall bind me and my heirs, personal representatives and assigns. Any person may deal with my attorneys-in-fact in full reliance that this Power of Attorney has not been revoked, upon the submission of a written statement to that effect by my attorneys-in-fact accompanied by a signed counterpart hereof. For the purpose of inducing any bank, broker, insurer, or other party to deal with my attorneys-in-fact, I agree that if this Power of Attorney is terminated for any reason, I and my heirs personal representatives and assigns will save any such party harmless from any loss suffered or liability incurred by dealing with my attorneys-in-fact prior to such party's receipt of written notice of termination.
- 2.2 No attorneys-in-fact acting hereunder shall incur any liability to me for acting or refraining from acting hereunder, except for such attorney-in-fact's own willful misconduct or gross negligence.
- 2.3 I revoke any and all prior powers of attorney and designations of guardian heretofore made by me.
- 2.4 This Power of Attorney shall survive, and shall not be affected by, any disability, incompetence, or incapacity which I may suffer at any future time or times, whether or not the same shall be adjudicated by any court. This Power of Attorney shall remain in full force and effect during my lifetime until expressly revoked in writing and until my attorneys-in-fact shall be notified in writing of such revocation. I request that no guardianship proceeding for my Property be commenced in the event of my disability. If any court appoints a guardian of my person and/or my Property, I direct that my attorneys-in-fact shall serve as guardian; and if more than one attorney-in-fact is serving under this Power of Attorney, the attorney-in-fact first named shall serve as guardian. I direct that any guardian shall be excused from giving bond.
- 2.5 The section headings of this document are to be given no effect in interpreting the provisions hereof and are inserted solely for convenience. This Power of Attorney shall be governed by the laws of the Territory of the United States Virgin Islands in all respects, including its validity, such

initial



REVOCABLE POWER OF ATTORNEY

Gary V.J. Thomas to Maline Thomas & Egbert Thomas, Jr.

Page 6

ACCEPTANCE BY ATTORNEYS-IN-FACT

Egbert Thomas, Jr.
Name:

Address: 177 Anna's Hope

Csted, USVI, 00820

SUBSCRIBED AND SWORN TO before me

this 27th day of October, 2014

Malvina A. Jackson

Notary Public

Malvina A. Jackson

St. Croix, U.S. Virgin Islands

N.P. - 95-13

Commission Expires on Nov. 7, 2017

Malvina A. Jackson
Name:

Address: #1200 Williams Delight

Csted VI 00840

SUBSCRIBED AND SWORN TO before me

this 27th day of October, 2014

Malvina A. Jackson

Notary Public

Malvina A. Jackson

St. Croix, U.S. Virgin Islands

P - 95-13

Commission Expires on Nov. 7, 2017

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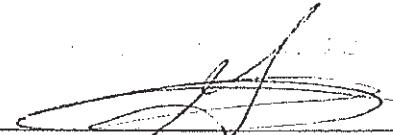
REVOCABLE POWER OF ATTORNEY

Gary V.J. Thomas to Maline Thomas & Egbert Thomas, Jr.

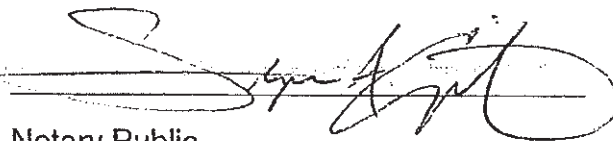
Page 5

invalidity shall not affect the other provisions, which shall remain in full force and effect, and, as necessary, the State of New York.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 9 day of October, 2014.


GARY V.J. THOMAS

SUBSCRIBED AND SWORN TO before me
this 9th day of October, 2014


Notary Public

STEPHEN A. ESPINET
Notary Public, State of New York
No. 01ES6194593
Qualified in Kings County
Commission Expires October 6, 2016

ATTESTATION CLAUSE

I declare that I am 18 years of age or older, and am not designated by this or any other documents as the Principal's attorney-in-fact. I further declare that the Principal signed this document in my presence.

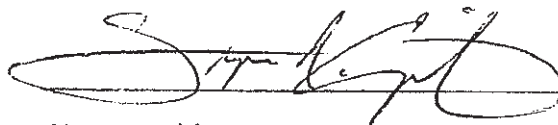
Edwin Carathian
Name:

Address: 150 PARK ROW
NEW YORK, NY 10007

Edward Carathian
Name:

Address: 150 PARK ROW
NEW YORK, N.Y. 10007

SUBSCRIBED AND SWORN TO before me
this 9th day of October, 2014


Notary Public

STEPHEN A. ESPINET
Notary Public, State of New York
No. 01ES6194593
Qualified in Kings County
Commission Expires October 6, 2016

initial GT

AFFIDAVIT OF GARY V.J. THOMAS

I, GARY V.J. THOMAS do swear or affirm under penalty of perjury under the laws of the United States of America that my statements in this form are true and correct (28 U.S.C. § 1746).

- 1). I am over the age of eighteen years of age.
- 2). I am not under the influence of drugs or alcohol.
- 3). I am making this statement on my own free will and without coercion.
- 4). I executed a Durable Power of Attorney on October 9, 2014 giving certain powers to Maline Thomas and Egbert Thomas Jr. of P.O. Box 302, Christinasted, VI 00821 to act on my behalf as if I was present.
- 5). I freely give those powers and those powers shall remain in full force and effect until revoked by me according to governing law of the land.
- 6). I would testify to these facts, if required.

I have reexecuted this Affidavit on this the 6 day of March, 2018.

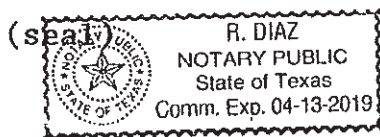
Signature: _____

Gary V.J. Thomas
Reg. No. 08951-094
F.C.I. Big Spring
1900 Simler Avenue
Big Spring, TX 79720

STATE OF TEXAS

COUNTY OF HOWARD

I am a staff member here at FCI Big Spring and I have witnessed the inmate before me sign this Affidavit on the 6th day of March, 2018



Signature: _____

Notary Republic

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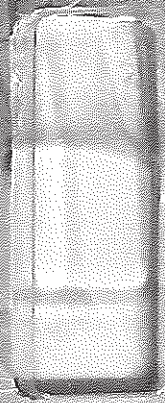


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Open DS_Store file

You can open file with DS_STORE using special software adopted to do this. In order to open DS_STORE file **download one of the software**. Mac OS X file with viewing settings for a directory. It contains data about the folder's window position, window size, chosen view options (icon, list or column) and the layout of icons in the window.

DS_STORE file extension. How can I open DS_STORE file format?

www.azfiles.net/extension/dsstore.html

PEOPLE ALSO ASK

Is it safe to delete DS_Store?

What does DS_Store stand for?

DS_Store? DS_Store, which stands for **Desktop Services Store** is a hidden file created in every local folder in Mac OS X. This file stores custom attributes such as position of folder icons and the choice of background colors. By default it will be created in every local folder accessed by Mac OS X.

What is DS_Store And How To Remove It?

www.addictivetips.com/windows-tips/what-is-ds_store-an

Was this helpful?

.DS_Store

In the Apple macOS operating system, **.DS_Store** is a file that stores custom attributes of its containing folder, such as the position of icons or the choice of background image. The name is an abbreviation of Desktop Services Store, reflecting its purpose. It is created and maintained by the Finder application, every folder, and has functions similar to the `desktop.ini` in Microsoft Windows. Starting with a full stop (period) character, it is hidden in Finder and many Unix-like file systems. Its internal structure is proprietary, but it has since been reverse-engineered.

 Wikipedia

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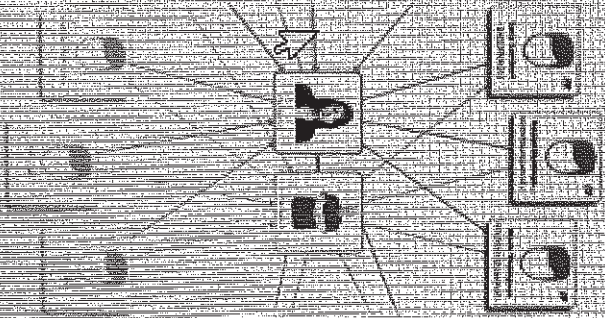
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Package Explorer User Gui

Today, 6:02 PM

C:\Users\N11\Documents\Case\Discovery_M_4_10_14\Ex N 11 HTC_PT08 2012 12 31 12 30 32 q08 conf review conf as prfave			
Elapsed time	00:00:00	Total size	
Remaining time		Speed	
Files	0	Processed	
Compression ratio	1	Compressed size	
Errors			
0	Can not open file C:\Users\N11\Documents\Case\Discovery_M_4_10_14\Ex N 11 HTC_PT08 2012 12 31 12 30 32 q08 conf review conf as prfave		

Once

10:07 PM
8/22/2020

